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CHARLES ELMORE CROPLEY

Supreme Court of the United States

OCTOBER TERM, 1945

No. [redacted] 29

JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York,

Petitioners,

against

CARTER & WEEKES STEVEDORING COMPANY,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of New York

BRIEF FOR RESPONDENT

February 23, 1946.

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BOWNE & CO., NEW YORK CITY

Supreme Court of the United States

OCTOBER TERM, 1945

No. 518

JOSEPH D. McGOLDRICK, Comptroller of the City of New York, and ALMERINDO PORTFOLIO, Treasurer of the City of New York,

Petitioners,

against

CARTER & WEEKES STEVEDORING COMPANY,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of New York

BRIEF FOR RESPONDENT

This case presents all but one of the issues which are involved in the case of *McGoldrick, et al.* v. *John T. Clark & Son*, No. 519, and we therefore respectfully refer the Court to our brief in that case.

The only significant distinction between the facts in this case and the facts in the *Clark* case is that none of the stevedoring operations in this case were performed in New Jersey. All were performed within the territorial limits of the City of New York.

Other distinguishing facts, which do not, however, affect the issues of law, may be briefly stated. Respondent, Carter & Weekes Stevedoring Company, is a West Virginia corporation with an office in New York City (R. 27). Most of its stevedoring operations were performed under contract

to Norton, Lilly & Company (as agents for the American and Australian Line of London [Exhibit 6] R. 68), and under contract to A. L. Burbank & Company (R. 40). About 50% of the work was done for the former, 25% for the latter, and 25% for other steamship companies (R. 41). 95% of the vessels that were loaded and discharged by respondent during the years in question were destined to or had arrived from foreign countries. The other 5% were engaged in interstate trade. None were engaged in intrastate trade (R. 29). Most of the vessels carried cargo from Australia to England, unloaded in England, arrived light in New York, and were then loaded by respondent with cargoes for Australia (R. 54). Most of the cargo loaded by respondent came from New Jersey (R. 59).

Respondent, in addition to its gross receipts from stevedoring, had a small amount of income from dividends and interest on which it paid the tax in question (R. 24-25; Exhibits 2-5). The tax returns were received by the Comptroller of the City of New York without protest until July, 1942, when George Marlin, Special Deputy Comptroller of the City of New York, made the following rule:

> "General Business and Financial Tax
>
> "Receipts from Stevedoring Operations carried on entirely within the Territorial Limits of the City of New York are to be Included in the Measure of the Tax. Based upon recent United States Supreme Court decisions subsequent to the *Puget Sound* case, the receipts from stevedoring operations carried on entirely within the territorial limits of the City of New York are to be included in the measure of the tax under the General Business and Financial Tax Law. No apportionment is necessary since the measure of the tax is restricted to receipts from activities carried on exclusively within the City of New York. Dated: July 13, 1942. George Marlin, Special Deputy Comptroller" (R. 23).

Thereafter, respondent received a notice of deficiency assessment in the amount of $2,352.75 on account of its non-payment of the tax on its gross receipts from stevedoring operations (R. 10, 23).

Respondent denied its liability to pay the deficiency assessed, asked for a hearing (R. 19) and deposited $2,352.75 with the Treasurer of the City of New York pursuant to the provisions of the Administrative Code of the City of New York in order to obtain a review (R. 20-21).

This proceeding was instituted to require the Treasurer of the City of New York to refund said deposit.

Conclusion.

Respondent respectfully submits that the final order and judgment of the lower court directing the refund of the deposit in question should be affirmed.

Respectfully submitted,

ROGER S. BALDWIN,
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SAMUEL M. LANE,
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